

A HISTORY OF THE LEGAL REGULATION OF MEDICAL PRACTICE IN NEW YORK STATE

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REGULATION of the practice of medicine in New York was recognized as necessary early in the history of the colony and state. A colonial law in 1684 prohibited the practice of medicine "without the advice and consent of such as are skillful in the said Arts." In 1760 another colonial law provided for the regulation of medicine in New York City through the examination and licensure of candidates by specified magistrates. After the Revolution, examination by a magistrate was made contingent on the possession of certain educational qualifications. Legislation enacted in 1797 provided a measure of regulation of medicine; it permitted magistrates to license individuals by indorsing certificates of study issued by reputable physicians and surgeons.

The law of 1760 had not been retroactive, and the irregular practitioners already in the city were therefore unaffected by it, but the laws of 1797 required that:

... no person practicing physic or surgery at the time of the passage of the Act should continue to so practice without satisfactory proof to the Chancellor, a judge of the Supreme Court, a master in chancery, or a Judge of the Court of Common Pleas, that he had practiced for two years . . . or had studied that time with a reputable physician or surgeon, and had filed a certificate to that effect with the County Clerk.

The act further required that no other person should practice physic or surgery without a certificate from one or more physicians or surgeons that he had studied medicine for four years under the preceptors signing it, and that he was qualified to practice.¹ Applicants were not required to pass examinations. Legislation passed in 1806 made the pro-

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fession itself responsible for the regulation of "physic and surgery."² The law permitted incorporation of medical societies in each county and authorized the officers of the county and state societies to examine and license candidates. Candidates for licensure could appeal the decisions of local bodies. This law, the object of which was to obtain incorporation for a medical society for "the suppression of empiricism and the encouragement of regular practitioners,"³ was intended to secure independence for the State Medical Society and the county medical societies, while the newly incorporated State Medical Society was recognized as the more important body insofar as it could pass on the refusal of a county society to grant a medical license to a properly qualified student, and could grant this privilege in countermand to the action of the county societies.⁴ In subsequent years laws were enacted requiring the registration of practitioners with the county clerk, and penalties were imposed for the illegal practice of medicine.

An important step in the regulation of medical practice occurred when the University of the State of New York, through its Board of Regents, was authorized in 1809 to incorporate colleges, and empowered such colleges to grant the degree of doctor of medicine without examination by the censor. This degree constituted a license to practice. Incorporated colleges with the approval of the regents could also endorse degrees conferred by colleges outside the state.

The period from 1806 to 1872 appears to have been a difficult one for the regulation of medical practice; three forces then contended for control of the power of licensure. These were the organized medical profession, the medical colleges, and the University of the State of New York, acting through its regents. Under the law of 1806, the only penalty for practicing without a license was the inability to collect fees by action at law. A further revision of this law in 1813 omitted all penalties for practicing without authority. The Revised Statutes of the State, passed in 1827, were designed to

forbid the practice of physic and surgery to any one not a member of a county society, and not only to regulate the licensing of practitioners, but to provide for the good behavior of licentiates by prescribing a legal method of expelling members of county societies for forfeiting their right to practice medicine for gross ignorance or misconduct in his profession or immoral conduct or habits.⁵

Under this law no one could practice unless he had a license or a diploma from an incorporated medical society of the state or had the degree of M.D. from a university. If he was authorized to practice in another state or country and had a license or diploma from a medical society in such a state or country he was required to file a copy of his license or diploma with the county clerk, and to give the medical society of the county satisfactory proof of his having followed the plan of study prescribed for students in New York State.⁶

Further confusion arose when the penal clause of the 1827 statutes, which make an unlicensed practitioner guilty of a misdemeanor, was repealed.

The laws became even more inefficient and confused. An act passed in 1844 made it a misdemeanor to practice without a license in cases of gross ignorance, malpractice, or immoral conduct.⁷

In 1872 the regents were first empowered to appoint "one or more boards to consist of not less than seven members who shall have been licensed to practice physic and surgery in this State."⁸ Under the law three separate boards of examiners were appointed to examine and license candidates in the schools of medicine then in existence. Although this law first established the principle that licenses should be granted by a state department and not by those engaged in teaching and practicing medicine, the principle was limited in application, and the other sources of licensure—the medical societies and the colleges—continued to hold their powers. By an 1880 statute, however, the societies were divested of their legal right to issue licenses, and that power now was divided between the regents and the colleges. Further streamlining of regulations came in 1890, when the medical degree no longer sufficed as a license to practice and the power to grant licenses was granted solely to the regents. Candidates for licensure were required to have specified preprofessional education and to have attended only medical schools registered by the University. Another significant provision of this law created a Board of Medical Examiners that represented the regular medical profession, the homeopathic, and the eclectic schools; these boards were charged with the responsibility for examining and licensing candidates.⁹

In 1893 the laws relative to medical practice were consolidated into the Public Health Law. The next major statutory change occurred in 1907 when the three separate boards of examiners were

replaced by one board that was made responsible for medical licensure and of the enforcement law. To assist the board, the regents were empowered to appoint a secretary.¹⁰ The same statute for the first time recognized osteopathy as one of the schools of medicine.

After 1907 there were still provisions in the law that permitted various kinds of medical sects. Still prevalent, according to J. J. Walsh, were sellers of false cures and remedies: "We still permit the compounder of medicine, even more impudent in his ignorance and almost without pretense of knowledge of his avocation, just as he did in the eighteenth century."¹¹

Between 1893 and 1926 charges of illegal practice were commonly prosecuted by counsels for the various medical societies and, pursuant to the Public Health Law,¹² fines imposed for convictions were paid to the county medical societies, which in turn used these fines to pay their lawyers. Defense lawyers protested that the prosecuting attorneys were motivated to conduct successful prosecutions more by prospective fines than by an intention to maintain high standards of medical practice. An outcry arose demanding prosecution of such cases by public attorneys and, in practice, the New York County Medical Society, which had made it a policy to refuse fines from convictions for illegal practice, began to use the services of the district attorney of New York County in such prosecutions. This practice was based on the fact that violation of statutes of the Public Health Law regarding medicine constituted a misdemeanor and that, as such, it should be prosecuted by the law officers of each county, namely the district attorneys. This practice became so widespread that a demand arose for intervention by the attorney general.¹³

Between 1907 and 1927, the statutory responsibility for professional licensure and law enforcement was vested in the New York State Board of Medical Examiners. This Board hired medical investigators, who supervised the licensing examinations prepared and rated by the Board; these investigators were charged with the responsibility for enforcement of medical professional laws. They gathered evidence based on complaints submitted to the secretary of the Board who, if the evidence seemed sufficient, referred it to attorneys who instituted criminal prosecution of the alleged violators.¹⁴

However, as indicated by the prosecution of cases of illegal practice by lawyers from county medical societies, the burden of

professional law enforcement became too great for the limited agency of the Board of Medical Examiners.

Inadequate enforcement of the Public Health Law and of the Education Law¹⁵ that related to medicine resulted in a convocation of doctors and lawyers representative of the several county medical societies of New York State. The purpose of this meeting, held at The New York Academy of Medicine in 1926 and 1927, was to obtain repeal of the medical regulatory statutes of the Public Health Law and to draft the so-called Medical Practice Act, Article 131 of the Education Law.

The Medical Practice Act prohibits the practice of medicine or the use of the title of doctor by an unlicensed individual.¹⁶ Illegal practice constitutes a misdemeanor. The attorney general and, in some instances, the district attorney, are required to prosecute such cases in courts of specified jurisdiction. Under the Medical Practice Act no license is required of an intern or member of the resident staff of a legally incorporated hospital or of any resident physician serving in a state institution or in an institution of political subdivisions of the state, provided the physician has completed specified courses in a registered medical school in the United States or Canada, or in a foreign medical school that has maintained standards not lower than those prescribed for medical schools in New York State.¹⁷

The 11 articles of the Education Law that establish minimum requirements for entrance into the professions also postulate certain standards for professional conduct on the part of licensed practitioners. Violation of these statutory prohibitions may result in the revocation or suspension of a license or in a censure or reprimand. The final authority for the imposition of these sanctions, as established in the Education Law, is the Board of Regents. Section 211 of the New York State Education Law establishes the Board of Regents as the executor of all determinations regarding the discipline of violators. As prescribed by the Medical Practice Act, grounds for initiation of disciplinary proceedings are: fraud or deceit in admission to practice; conviction of a crime; failure to register where failure is not satisfactorily explained; fraud or deceit in practice; unprofessional conduct; immoral conduct; failure to become a citizen within a specified period; advertising for patronage by means of handbills, posters, circulars, letters, stereopticon slides, motion pictures, radio, or magazines; the use

of secret methods, cure, or treatment in practice; criminal abortion or complicity in it; fee-splitting; alcoholism; drug addiction; and insanity.¹⁸

The Medical Practice Act authorized the action of the attorney general in enforcement.¹⁹ The act specifically imposed upon the attorney general the duty of prosecuting all illegal practitioners of medicine. At the time the Education Bureau of the Department of Law (the attorney general) estimated on the basis of investigation that "of every four individuals practicing medicine within New York State, at least one was an unqualified charlatan."²⁰ The Department stated:

An integral part of the proper administrative machinery for clearing the state of illegal quacks and charlatans is the assignment of a deputy attorney general to devote his entire time to the important work of prosecuting these cases on behalf of the citizens of the state.²¹

And while providing for prosecution of unlicensed individuals under the Education Law, the Medical Practice Act also created a Medical Grievance Committee separate from the Board of Medical Examiners. This Committee was charged with the duty of conducting hearings involving disciplinary charges against licensed practitioners. It was formed:

To eliminate this licensed unethical group. This committee . . . modeled upon the grievance committee of the Bar, for the discipline of licensed physicians . . . has authority to investigate all charges of unprofessional conduct on the part of practicing physicians and to recommend to the Board of Regents the revocation of a physician's license, and the annulment of his registration or any other form of discipline.²²

The Medical Practice Act provided: a means for uniform criminal prosecution of illegal practitioners, standards for entrance into the profession for professional conduct, and a mechanism by which those statutory standards might be enforced. Also it designated the Board of Regents of the University of the State of New York as executors of decisions in cases involving charges made against a doctor in regard to the legality of his licence.

While this most important statutory change promised increased effectiveness in professional law enforcement, such a condition was not

immediately forthcoming. Although the attorney general of the State of New York had been made responsible for prosecutions of illegal practice of medicine, as already mentioned, the investigative body for professional law enforcement was still the State Board of Medical Examiners, whose funds for operation, in fact, came from the yearly registration fees paid by licensed doctors in the state. And the institution of the separate Medical Grievance Committee charged with the duty of hearing disciplinary cases did little to ease the burden carried by the investigators of the Board of Medical Examiners.²³

In 1938 an investigation focused upon abortion rings and on the effectiveness of the State Education Department in dealing with them. Disciplinary action was instituted in Kings County under the direction of John Amen, an assistant attorney general. Preliminary findings of this investigation disclosed a discouraging picture of disciplining abortionists who were physicians. Statistics showed that during the entire existence of the Medical Grievance Committee, 52 of 77 formal charges involving abortion or attempted abortion were dismissed. In the 25 cases in which guilt was found, 7 licenses were revoked and 14 suspended; 4 physicians were censured.²⁴

Until the fall of 1938 responsibility for the investigations of violations of the professional statutes rested on both the Division of Professional Education and the secretaries of the professional Boards of Examiners in medicine, dentistry, and pharmacy, who were under the direct supervision of the associate commissioner for Higher and Professional Education. These secretaries reported the results of their investigations to the assistant attorney general assigned to the department, who then instituted and conducted formal hearings before these bodies, including the Medical Grievance Committee.

At that time the regents created a new position bearing the title of executive secretary of the Division of Professional Conduct. The duties of this functionary included responsibility for investigation of all complaints, of all unprofessional conduct or illegal practice in any of the licensed professions and, as well, of supervision of the New York office responsible for the administration of laws that dealt with the professions. The intent to provide the public and the professions with more efficient and systematic enforcement of the acts that dealt with professional practice was further implemented in 1940, when the regents established the Division of Law Enforcement. The regents attached all

professional investigators and inspectors to this division and installed the executive secretary of the Division of Professional Conduct as director. This newly established division was mandated to secure evidence stemming from complaints and to prepare cases based upon such complaints.²⁵

The secretaries of the medical and dental boards were administratively divested of all responsibility in relation to investigations and the gathering of evidence, despite their objections. The statutes that fixed responsibility for investigations on these secretaries remained unchanged.

The associate commissioner for Higher and Professional Education reported: "one of the outcomes of this new procedure has been the striking increase in the number of cases prepared and presented to the Medical Grievance Committee."²⁶

The second major administrative change that took place during this period occurred in 1941 when, the statute notwithstanding, the function of registering physicians, osteopaths, and physiotherapists was transferred from the secretary of the State Board of Medical Examiners to a central registration unit.

Although there was subsequent modification of the machinery for enforcing the laws relating to the professions, including medicine, the objectives of the Division of Law Enforcement (now called the Division of Professional Conduct) have remained the same; these are to suppress the practice of professions by unlicensed and unregistered individuals and to prevent the violation of professional laws by licensed practitioners. The policy of the division, since its inception in 1940, has been to obtain voluntary compliance with the Education Law and to educate both licensed and unlicensed persons as to the provisions of regulatory statutes.²⁷ And while disciplinary action against professional practitioners is the most severe form of action and is taken, in most cases, as a last resort, it is significant to the history of the regulation of medical practice in New York State to understand the aims of the machinery of the New York State Education Department and of allied officials and organizations.

In order to curtail and suppress the unlawful practice of medicine by unlicensed and unregistered persons and to prevent and detect the violation of the statutes by licensed and registered practitioners, the Division of Professional Conduct performs the following functions: 1) it investigates complaints alleging violations of the professional laws; 2) it dis-

misses complaints lacking merit; 3) it appears at hearings of the professional boards and grievance committees; and 4) it supplies stenographic assistance to the assistant attorney general and to the hearing boards and grievance committees.²⁸

The objective of the assistant attorney general in the Bureau of Education is to assist in the enforcement of the laws that deal with the professions and to suppress illegal practice and unprofessional conduct. The assistant attorney general evaluates investigations made by the Division of Professional Conduct and prosecutes disciplinary and criminal cases. When satisfied as to the adequacy of evidence gathered by the Division of Professional Conduct, the assistant attorney general prepares formal charges and initiates the administrative hearings. He acts as legal adviser to the Division of Professional Conduct and is, in turn, dependent upon the effectiveness of the Education Department in obtaining evidence with which he can proceed with successful prosecutions and thus discharge the responsibility given him by the statute.

The disciplinary mechanism is set in motion by complaints from patients or physicians or from other sources. Complaints of illegal or unprofessional conduct are commonly made in writing to the offices of the New York State Education Department, the office of the attorney general, or to the offices of the state or county medical societies. After referral to the Division of Professional Conduct, all complaints are reviewed, investigated, and either dismissed or acted upon in the following ways:

In disciplinary cases, the assistant attorney general in the Education Bureau prepares formal charges against the practitioner after he is satisfied with the evidence against the alleged violator. The charges specify the provisions of the Medical Practice Act allegedly violated, and itemize the violations in detail. Arrangements for hearing of the case before a subcommittee of the Medical Grievance Committee are made in conjunction with the director of the Division of Professional Conduct. At hearings of the subcommittee, the assistant attorney general presents the evidence to sustain the charges. During the course of the hearings, the assistant attorney general does not participate in deliberations of the hearing body, but is consulted in connection with the findings of the hearing body, and he prepares the findings and recommendations of the grievance committee pursuant to its instructions. In medicine he appears informally before the full Grievance Committee only to read and ex-

plain the findings and recommendations of the subcommittee. Where the full grievance committee rejects a finding of guilty, the case comes to an end. The assistant attorney general has no power to appeal to the regents. Where the finding of guilt is affirmed by the full Grievance Committee, the assistant attorney general and the respondent appear before the Regents' Committee on Discipline.

The objective of the hearing body in medical disciplinary proceedings is to protect the public by eliminating unprofessional and unethical conduct. To achieve this objective it hears charges and makes recommendations to the Board of Regents with regard to revocation of licenses or other disciplinary action.

In formal hearings held before the Medical Grievance subcommittee or the full Committee, the accused practitioner has the right to appear in person or by counsel, to cross-examine witnesses, and to question the evidence. The evidence for the case is first presented by the assistant attorney general, then by counsel for the respondent. Then witnesses are examined and cross-examined. During the hearing the assistant attorney general may be called upon to advise members of the Grievance Committee or subcommittee as to the admissibility of evidence and motions, and to give legal advice to members of the hearing body if necessary. The findings of the subcommittee are then submitted to the secretary of the full Medical Grievance Committee, which meets quarterly. In medicine, a finding of guilt may result only from a unanimous vote of the 16 members of the committee. The respondent is not present, and no testimony is taken at the meetings of the full Medical Grievance Committee. The full Committee has available a transcript of the record of the hearing held before the subcommittee. In addition to the record, it is customary procedure for the full Committee to question the subcommittee and the assistant attorney general. The full Committee usually follows the recommendation of the subcommittee. The minutes of the subcommittee hearing, as transcribed by the hearing reporter provided by the Division of Professional Conduct, are sent by the assistant attorney general to the assistant commissioner for Professional Education in Albany, who then sends the complete record and a memorandum for each case, including a brief biographical sketch of the alleged violator, to the three members of the Regents' Committee on Discipline. The Committee is sent the case record and the memorandum including a brief biographical sketch of the accused doctor and ver-

batim excerpts from the charges, findings, and recommendations of the Medical Grievance Committee. At hearings of the Regents' Committee on Discipline, the respondent and his counsel, the assistant attorney general, the director of the Division of Professional Conduct, the assistant commissioner for professional education and the secretary of the Medical Grievance Committee are present. Following deliberations by the Regents' Committee on Discipline, in which only the members participate, the committee instructs the assistant commissioner for Professional Education to prepare its report and recommendations for the full Board of Regents. The members of the Committee then sign this report and submit it, through the assistant commissioner for Professional Education, to the secretary of the Board of Regents.

The full Board of Regents hears each case on the basis of a copy of the report of the Regents' Committee on Discipline and a copy of the assistant commissioner's memorandum on the accused practitioner citing the charges, findings, and recommendations. The record of the hearing by the subcommittee is submitted to the regents who, by formal vote, approve, modify, reject, or remand the report of the Committee on Discipline and empower and direct the Commissioner for Professional Education to execute an order carrying out their decisions. The order is prepared by the departmental counsel and served by the Division of Professional Conduct. An order becomes effective only when served personally on the accused; this is by departmental policy, not by law.

A physician may appeal from any disciplinary penalty imposed by the regents through the medium of a judicial review under the provisions of article 78 of the Civil Practice Law and Rules. In recent years the possible scope of judicial review has been expanded to include the severity of the penalty imposed, and a review of judicial determinations has indicated that in a few instances the courts have felt that the quantum of punishment assessed by the regents has been too severe. Appeals taken from final action of the regents must be brought in the Appellate Division of the Supreme Court, Third Judicial Department, in Albany. Since the attorney general conducts the hearings upon which disciplinary penalties are predicated, the Appeals Bureau of the Department of Law argues all the appeals under Section 78 of the *Civil Practice Law and Rules*.²⁹

We may summarize the life history of a complaint by listing sequentially the steps involved:

1) Formal complaint received at offices of Division of Professional Conduct.

2) Investigation ordered by director of the Division of Professional Conduct, who makes recommendation as to necessity for further action, dismissal of complaint, or formal disciplinary proceedings.

3) Subcommittee of Medical Grievance Committee designates cases in which formal charges are to be presented, based upon facts revealed in investigation and after recommendation from the director of the Division of Professional Conduct.

4) Assistant attorney general prepares charges.

5) Subcommittee of Medical Grievance Committee holds hearings, makes recommendations to the

6) Medical Grievance Committee, which makes its decision based on subcommittee recommendation.

7) Assistant attorney general sends case record to assistant commissioner for Professional Education, who then sends case record and memorandum to the

8) Regents' Committee on Discipline, which makes its recommendations, sending them through the

9) Assistant commissioner for Professional Education to the

10) Board of Regents, who approve, modify, reject or remand the report of the Committee on Discipline. The decision of the Board of Regents is carried out by the

11) Commissioner of Professional Education, who acts through the Division of Professional Conduct.

12) Possible judicial review in the Appellate Division, Third Department, argued by the Appeals Bureau, Department of Law.

It is of interest to note, after delineating the process of formal medical disciplinary proceedings, that hearings on charges are held before members of the medical profession, so composed on the assumption that only members of the profession are qualified to understand and judge the technical facts presented. However, *most* questions presented before the Medical Grievance Committee are issues of simple fact and are not really complicated technical questions. Even questions involving abortions and drug addiction ultimately rest on an issue of fact: whether something that is contrary to the provisions of the law has or has not been done.³⁰

Although external to the mechanism of the New York State Educa-

tion Department, the various county medical societies in the state play an important adjunctive role in investigation of complaints against doctors. The county medical societies attempt to resolve complaints lodged by patients or other physicians against member physicians.

Grievance committees of the societies function primarily to adjust complaints of negligence or excessively high fees. Such complaints, commonly based on inadequate physician-to-patient communication, are mediated by the grievance committees of county medical societies.

The county medical societies' boards of censors act upon complaints of violation of medical ethics.

These committees of county medical societies act to maintain the code of ethics of the society and to maintain good physician-patient relations. Furthermore, the vigilance of these bodies may serve to deter doctors from possible legal action when charges that question the validity of the medical license, not solely the privileges of medical society membership, would be involved.

While the actions of committees of county medical societies are limited to members of a particular society, and while their authority is limited to censure and to suspension or revocation of society membership, such committees assist in the legal regulation of medicine, as such, by providing records and testimony helpful in obtaining prosecution through the Division of Professional Conduct of the New York State Education Department for professional misconduct.³¹

A criticism of the system within the State Education Department was that of the time-lag in prosecuting cases. In 22 medical cases studied from 1945 to 1947 the average lapse of time between preferment of charges and their eventual resolution was 411 days; the median time lapse was 352 days.³² This delay may have reflected the point raised earlier, that disciplinary proceedings are held before a body of busy physicians. The determination of many cases may not require the medical knowledge of the Medical Grievance Committee, although it is for those cases in which a professional judgment is required that the body exists. No complete solution to the problem of delay has yet been proposed by doctors, lawyers, or members of the State Education Department.

However, despite an increasing professional population, the State Education Department facilities for enforcement have kept pace with the growing number of professionals and with the concomitant increase

TABLE I.*

	<i>Disciplinary complaints received by Division of Professional Conduct</i>		<i>Cases closed</i>			
			<i>By Division</i>		<i>By Board of Regents</i>	
	<i>Total</i>	<i>Medical</i>	<i>Total</i>	<i>Medical</i>	<i>Total</i>	<i>Medical</i>
1965-1966	3836	193	4353	553	83	29
1962-1963	1289	909	521	112	66	38
1959-1960	701	144	817	91	50	24
1956-1957	1168	247	1096	278	47	23
1953-1954	696	118	644	148	59	27
1950-1951	448	96	268	62	34	20
1947-1948	190	63	198	91	49	34
1944-1945	469	96	529	148	58	32

*From records of the Division of Professional Conduct, New York State Education Department, Albany, N. Y.

in the bases of disciplinary and criminal action relating to the professional statutes. An increasing case load achievement of the Division of Professional Conduct has been attained through: 1) improvement in administrative procedures, including a 1961 increase from 10 to 20 investigators; 2) centralization of investigation; 3) pooling of investigators for service in all professions; and 4) increased field work. For a brief statistical sketch of the total and medical case loads of the Division of Professional Conduct and the Board of Regents since 1944 see Table I.³³ Medical disciplinary cases recorded from July 1, 1965, to June 30, 1966, appear in Table II.

While no determination of the average or median time lapse has been made in recent years, the lapse has been greatly reduced from that earlier mentioned. The increased case load achievement and decreased time lapse have been achieved in the face of a professional population that has grown from approximately 140,000 licensed persons in 1940, including roughly 35,000 medical practitioners, to 340,000 total professional licensees, including 42,000 licensed practitioners, in 1966.³³

Regulation of medical practice has retained the character of supervision by legislation. The 19th century conflict regarding the seat of authority for licensure resulted in the establishment in 1890 of the principle that medical licenses be granted by the Board of Regents of the University of the State of New York. The Medical Grievance

TABLE II.*

<i>Received by Division</i>		<i>Closed by Board of Regents</i>	
Disciplinary	167	<i>Disciplinary:</i>	
Probation	24	Censure and reprimand	10
Restoration	2	Revocation	3
	193	Suspension	6
Investigation	209	Resignation accepted	1
	402	Revocation stayed—probation	9
			29
<i>Closed by Division</i>		<i>Investigation</i>	
Disciplinary	553	Restoration denied	2
Investigation	236	License restored	3
	789	Revocation stayed—probation	1
			6

*From records of the Division of Professional Licensing Services, New York State Education Department, Albany, N. Y., as of August 1, 1966.

Committee invoked the use of a panel of physicians in disciplining other physicians. Criminal prosecution of the unlicensed practitioners, previously the domain of district and other attorneys, became the responsibility of an assistant attorney general attached to the State Education Department. The investigative function now lies solely with the Division of Professional Conduct which, together with the assistant attorney general, is responsible for enforcement of the professional statutes.

Presently the provisions of the Education Law provide standards of qualification for practice, methods of examination, certification, registration of candidates, grounds for illegal practice, penalties, and disciplinary hearing proceedings. The procedures described above are the means by which the provisions of the law are enforced.

NOTES AND REFERENCES

- Provisions of act quoted from Walsh, J. J., *History of Medicine in New York*, 5 vols. New York, Nat. Americana Soc., 1919, vol. 1, p. 82.
- Laws of the State of New York*, 29th session. An act to incorporate Medical Societies for the purpose of regulating the practice of physic and surgery in this state. Albany, Barber, 1806, chap. 138.
- Shaftel, N. History of the Medical Society of the State of New York, 1807-1957, *New York J. Med.* 57:446-47, 1957.
- Ibid.*, p. 447.
- Purrington, W. A., quoted in Walsh, J. J., *op. cit.*, vol. 1, p. 85.
- Ibid.*, p. 86.
- Ibid.*
- Laws of the State of New York*, 95th session. An act relating to the examina-

- tion of candidates for the degree of doctor of medicine. Albany, Brown, 1872, Chap. 746.
9. *Laws of the State of New York*, 113th session. An act to establish boards of medical examiners of the State of New York for the examination and licensing of practitioners of medicine and surgery; to further regulate the practice of medicine and surgery. Albany, Bank Bros., 1890.
 10. *Laws of the State of New York*, 130th session. An act to regulate the practice of medicine, and to repeal Article 8 of Chapter 661 of the laws of 1893 and acts amendatory thereof. Albany, Lyon, 1907.
 11. Walsh, J. J., *op. cit.*, vol. 1, p. 92.
 12. Public Health Law of 1893. In: *Laws of the State of New York*, 116th session. Albany, Lyon, 1893, vol. 1, chap. 661, sec. 153.
 13. *Ibid.*; and from conversations with Reed Dawson, legal counsel for the New York County Medical Society, held November 30, 1965, and August 21, 1966.
 14. This and further discussion of the function of the State Board of Medical Examiners was supplemented by conversation with J. McCullough, senior investigator of the Division of Professional Conduct of the New York State Department and one of five medical investigators for the New York State Board of Medical Examiners, February 1933 to January 1937. Conversation held November 23, 1965.
 15. The Education Law of 1910, sec. 1263, contained provisions that paralleled those relating to medicine in the Public Health Law of 1893, sec. 153.
 16. Methods of obtaining a medical license in New York State as established by the Medical Practice Act of 1927 (art. 131, Education law): 1) passed by a state licensing examination prepared by the Board of Medical Examiners; 2) by the endorsement of a license issued by another jurisdiction; 3) by passing an examination given by the National Board of Medical Examiners; and 4) by acceptance by the Board of Regents of the applicant's "conceded eminence and authority" in his profession.
 17. Prior to 1958 the standards of foreign medical schools were deemed unacceptable by an examining committee that made visits to foreign medical schools. This committee was composed chiefly not of doctors but of nonmedical educators, who returned to New York and printed lists of "approved" foreign medical schools. Since 1958, however, 40 of the 55 state and territorial jurisdictions in the United States have required that physicians trained in foreign countries other than Canada pass an examination given by the Educational Council for Foreign Medical Graduates as a prerequisite to admission to their licensing examinations.
 18. *Report of the Temporary State Commission on Coordination of State Activities*. Albany, Williams, 1948, appendix D, pp. 414-15; and the *New York State Education Law*, sec. 153, in: *The Consolidated Laws of New York*, annotated, Eldridge, H. N. and Bronaugh, M., eds. Northport, N. Y., Thompson, 1928.
 19. *New York State Education Law*, sec. 6513, subdiv. 5.
 20. *Annual Report of the New York State Education Department*, 1927, p. 79. Albany, Univ. State of N. Y., 1928, p. 79.
 21. *Ibid.*, p. 82.
 22. *Ibid.*
 23. *Laws of the State of New York*, 150th session, Albany, Lyon, 1927, chap. 85; an act to amend the education law to conform to the state department's law, in relation to the practice of medicine, dentistry, veterinary medicine and surgery, pharmacy, nursing and trained attendance, chiropody, optometry, engineering and surveying, architecture, public accounting and shorthand reporting, and repealing articles 8, 9, 10, 11, 12, 13 and 15 of the public health law and articles 4A, 7A, 8 and 8A of the general business law relating thereto; Article 8: Practice of Medicine, secs. 140 to 153; and from a conversation with J. McCullough.
 24. Amen, J. H. *Report of the Kings County Investigation, 1938-1942*, p. 82.

25. *Thirty-sixth Annual Report of the State Education Department, 1940*. Albany, Univ. State of N.Y., 1941, vol. 1, p. 173; and *Thirty-seventh Annual Report of the State Education Department, 1941*, Albany, Univ. State of N.Y., 1942, vol. 1, pp. 186, 226-27.
26. *Thirty-seventh Annual Report of the State Education Department, 1941*, Albany, Univ. State of N.Y. 1942, vol. 1, p. 186.
27. The professions regulated by the Division of Professional Conduct now include: architecture, landscape architecture, certified shorthand reporting, chiropractic, dentistry, dental hygiene, osteopathy, physiotherapy, nursing (registered and practical), ophthalmic dispensing, optometry, podiatry, psychology, veterinary medicine, and social work.
28. *Report of the Temporary State Commission on coordination of State Activities, Second Interim Report*. Albany, Williams, 1948, p. 109.
29. *New York State Education Law*, sec. 6515, subdiv. 5.
30. From conversations with Reed Dawson.
31. From conversations with Reed Dawson.
32. *Report of the Temporary State Commission on Coordination of State Activities*, Table 24, p. 151.
33. From records of the Division of Professional Licensing Services, New York State Education Department, Albany, N.Y., as of August 1, 1966.

